IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1019 OF 2007

1. Ms Subhadra Sushil Anand,)
Principal of national College,)
Age 62 years,)

2. Datta R. Bhandarkar,)
Vice Principal of National)
College,)

3. Mr.Anil Abraharam,)
Teaching Faculty of National)
College,)

4. Ms Annie Verghese,)
Teaching Faculty of National)
College,)

5. Mr.Santosh Prasad,)
Teaching Faculty of National)
College,)

6. Ms Meghna Basu Thakur,)
Teaching Faculty of National)
College,)

7. Ms Rupali Patil,)
Teaching Faculty of National)
College,)

All above are employed in the)
M/s.R.D.National College,)
situated at Linking Road,)
Bandra West, Mumbai 400 050.).. Petitioners

Vs.

1. State of Maharashtra,)
Through Senior Inspector of)
Police, Khar Police Station.)

2. Ms Vidya Bansode,)
Presently employed at)
M/s.R.D.Natinoal College,)
Linking Road, Bandra (West),)

Mumbai - 400 050.).. Respondents

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Shri Dinesh Tiwari for the petitioners.

Shri A.S.Gadkari, APP for the respondent No.1.

Shri S.S.Lanke for the respondent No.2.

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CORAM : R.M.S.KHANDEPARKAR &
SMT.V.K.TAHILRAMANI, JJ

DATED : 13TH SEPTEMBER, 2007

JUDGMENT : (PER R.M.S.KHANDEPARKAR, J)

1. Heard. Rule. By consent, the rule is made returnable forthwith.

2. Shri Gadkari, the learned APP for the respondent No.1 and Shri Lanke, the learned advocate for the respondent No.2 waive service.

3. The petitioners seek direction for quashing the FIR No.130 of 2007 lodged at Khar Police Station, Mumbai.

4. Some time in July, 2006, the complainant Vidya Bansode came to be appointed in teaching faculty at M/s.R.D.National College at Bandra. A complaint came

to be lodged by father of the said Vidya Bansode as well as by the complainant Vidya herself to the Education Officer in November, 2006 making various allegations against the Management of the college. It appears that being dissatisfied about the reaction from the management and the Education Officer, the complainant lodged a complaint with Khar Police Station which came to be registered as FIR No.130 of 2007. The complaint relates to the alleged humiliation caused to the complainant on account of the alleged use of abusive language in the name of caste of the complainant. The said FIR is sought to be challenged on three grounds. Firstly and assuming that the petitioners had made statement allegedly using abusive language in the name and the caste, the complaint nowhere discloses alleged incidents having taken place in public view. Secondly that the complaint on the face of it nowhere discloses the caste of the petitioners which is absolutely necessary to take cognizance of the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, hereinafter called as the "said Act", and thirdly the complaint nowhere discloses use of abusive language in the name and caste with reference to or against the complainant by any of the petitioners.

5. As regards the first ground of challenge, perusal of the complaint discloses the incidents on various dates and one of the incidents alleged to have taken place in September, 2006 refers to the teachers' room. The allegation refers to the use of humiliating expression by the petitioner Rupali Patil in the presence of one Santosh Madam and similar expression by Santosh Madam in the presence of Rupali Patil. Obviously, these statements cannot be said to be not in public view. Similarly, the allegation against the petitioner Anil Abraham refers to the incident in the class room while the complainant was teaching her students. Obviously, it is in the presence of students and hence in public view. Similar is the case in relation to the allegations made regarding the incident dated 27th November, 2006 in the staff room which pertain to the expressions used by the Principal Ms. S.S.Anand. So also is the allegations regarding the incident dated 30th November, 2006 in the chamber of Vice-Principal Datta Bhandarkar which refers to the expressions having been used in the presence of peon of the college. In the circumstances, it cannot be said that the complaint nowhere discloses expressions having been used in public view. Prima facie, the complaint does disclose some of the expressions having been used in the public view.

6. As regards the second ground of challenge, it relates to the absence of reference to the caste of accused persons in the complaint and in that regard, attention is drawn to the decision of the learned Single Judge of this Court in **Manohar S/o.Martandrao Kulkarni & Anr. v. State of Maharashtra & Ors.,** reported in 2005 ALL MR (Cri) 2602. The learned Single Judge in the said decision while relying upon another unreported decision of a Division Bench of this Court in **Anant Vasantlal Sambre v. State of Maharashtra,** delivered on 20th April, 2001 in Criminal Writ Petition No.49 of 2001, has held that :-

> "It is a precondition that persons committing the alleged offence must not be belonging to Scheduled Castes or Scheduled Tribes. In the report filed at the Police Station, there ought to have been some averment indicating that Shri Kailash Gorantyal does not belong to Scheduled Castes or Scheduled Tribes. In the absence of such averment, or any other material before the police station officer for coming to the conclusion that the accused named in the said report does not belong to scheduled castes or scheduled tribes, the

> offence under Section 3 of the said Act cannot be registerd.

Reliance was also placed on another decision of this Court in the matter of **Bai @ Laxmibai Nivrutti Poul & Ors. v. State of Maharashtra,** reported in 2001 ALL MR (Cri) 219, wherein it was held that the caste of the complainant should be apparent on the face of record in the complaint lodged by the complainant so as to enable the police authorities to take cognizance of the said complaint under the said Act. It was also held that unless the F.I.R. discloses basic requirement of law which could enable the police authorities to initiate investigation by considering the allegations to be in the nature of cognizable one, no complaint can be registered as F.I.R. and the police cannot take cognizance of such complaint. In fact, that was the decision of the Apex Court in **Superintendent of Police, C.B.I. & Ors. v. Tapan Kumar Singh,** wherein it was held that :-

> "the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. .....

> The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery with a view to collect all necessary evidence, and thereafter to take action in accordance with law."

It was also held in **Manoj @ Bhau and Ors. v. State of Maharashtra,** reported in (1999)4 SCC 268 that a distinction should be drawn between disclosure of all facts and details relating to a cognizable offence and disclosure of essential substantial facts which are necessary to conclude that a cognizable offence has been committed.

7. Undisputedly, the F.I.R. in the case in hand has been lodged for commission of the alleged offence punishable under Section 3(1)(x) as also Section 7(1)(d) of Protection of Civil Rights Act, 1955.

8. Section 3(1)(x) of the said Act provides that whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, intentionally insults or intimidates with intend or humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view shall be punishable with imprisonment for a term which

shall not be less than six months but which may extent to five years and with fine. It is pertinent to note that in terms of Section 18 of the said Act, nothing in Section 438 of the Code of Criminal Procedure would apply in relation to any case involving the arrest of any person on an acquisition of having committed an offence under the said Act. Further in terms of Section 20 thereof save as otherwise provided in the said Act, the provisions of the said Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

9. Plain reading of the provisions of law comprised under Section 3(1)(x) of the said Act therefore would reveal that in order to enable the police to take cognizance of the offence committed under the said provisions of law, it would be necessary for the complainant to disclose that the person who is accused of commission of offence under the said Act is not a member of the Scheduled Caste or Scheduled Tribe and that he intentionally insults or intimidates with intend or humiliate the complainant or any other person who is a member of a Scheduled Caste or a Scheduled Tribe and lastly that such

incident should occur in public view. In other words, the complaint has not only to reveal the caste of the person who is sought to be insulted or intimidated or humiliated but he should also disclose that such person belongs to a Scheduled Caste or a Scheduled Tribe and simultaneously the complaint should also reveal that the person who is accused of commission of such offence does not belong either to a Scheduled Caste or to a Scheduled Tribe. It is only when the accusation with an intention to insult or intimidate or to humiliate has been made by a person not belonging either to a Scheduled Caste or a Scheduled Tribe and addressed to the person belonging to a Scheduled Caste or a Scheduled Tribe, and such incident occurs in public view, only in that case, it could be said to have committed an offence under Section 3(1)(x) of the said Act and not otherwise. Obviously, therefore, if the complaint does not disclose that the accused person does not belong to a caste other than Scheduled Caste or Scheduled Tribe, it would not disclose an offence in terms of the said Section, sufficient to take cognizance thereof by the police.

10. Reverting to the facts of the case, the complaint on the face of it discloses that the

complainant belongs to the caste "Mahar." There is a clear statement to that effect in the very first paragraph of the complaint by the complainant. At the same time, the complainant in the last but one paragraph thereof has specifically stated that she believes that the accused persons are "Uchhavarniya" (higher or upper caste). Undoubtedly, the complaint nowhere states that the petitioners do not belong to Scheduled Caste or Scheduled Tribe. There is no specific assertion to that effect. Nevertheless the complaint does disclose that the complainant has reason to believe that the accused belong to higher or upper caste. In common parlance, the expression "Uchhavarniya" means that the persons belonging to higher caste. The said expression is commonly used with reference to the people belonging to a caste other than the Scheduled Caste or Scheduled Tribe. Being so, it cannot be said that the complaint does not disclose anything about the caste of the accused persons.

11. As already observed above, the Apex Court in **Manoj @ Bhau's case (supra)** had clearly held that the F.I.R. is not an encyclopedia of events though it should disclose the basic facts sufficient to the investigating machinery to take cognizance of an

offence. When the complaint on the face of it discloses an allegation to the effect that the accused persons belong to the higher caste, at once it would reveal allegation to the effect that the accused persons do not belong to the caste of the complainant which is apparently revealed to be a scheduled caste. In fact, the statement in the complaint in the case in hand specifically makes an averment to the effect that the complainant belongs to "Dalit Samaj" whereas the accused persons are believed to be of higher castes. This apparently discloses that the accused do not belong to the scheduled caste or scheduled tribe. In our considered opinion, this would disclose basic facts necessary to take cognizance under the provisions of law comprised under Section 3(1)(x) of the said Act and to enable the investigating machinery to investigate into the matter. In the circumstances, it cannot be said that the complaint does not disclose caste of the accused persons in terms of Section 3(1) of the said Act.

12. As regards third ground, the complaint at various places refers to the allegations of use of humiliating expressions with reference to the complainant. It is not that only in case of abusive language used against the people belonging to the

scheduled caste or scheduled tribe that would warrant prosecution against such persons but even in case of expression used to or with the intention to humiliate the member of the scheduled caste or scheduled tribe by the persons who are not belonging to the scheduled caste or scheduled tribe that could invite prosecution under the said Act. Such expressions used in public view can constitute an offence under the said Act. Hence, we do not find any substance in the last ground of challenge to the F.I.R.

13. Needless to say that all the above observations have been made in order to deal with the challenge to the impugned F.I.R. Neither the courts below nor the investigating agency should get influenced in any manner by the aforesaid observations either for the purpose of investigation or for any other proceedings dealing with the matter. The said observations are not the findings relating to the merits of the case in the complaint. They have been made merely to ascertain whether prima facie the impugned F.I.R. discloses necessary ingredients of the offences under the said Act.

14. For the reasons stated above, therefore, there is no case made out for interference in the impugned

F.I.R. at this stage. Hence, the petition fails and is hereby dismissed. Rule discharged with no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(SMT.V.K.TAHILRAMANI, J)